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April 8, 2016

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20544

Notice of *Ex Parte*
Communication
<u>MB Docket No. 15-216</u>

Dear Ms. Dortch:

On April 6, 2016, Ralph Oakley and David Lougee (Chair and Vice-Chair, respectively, of the NBC Television Affiliates); Marla Drutz, Don Richards, Lloyd Bucher and Steve Baboulis, each of whom is a Director of the NBC Affiliates; Mark Prak and the undersigned, who are counsel to the NBC Television Affiliates, met with the following officials of the Commission to discuss the *Notice of Proposed Rulemaking* in the above-referenced docket: Commissioner O'Rielly and his Chief of Staff and Legal Advisor, Robin Colwell; David Grossman, Legal Advisor to Commissioner Clyburn; Marc Paul, Legal Advisor to Commissioner Rosenworcel; William Lake, Michelle Carey, Nancy Murphy, Diana Sokolow, Steve Broeckaert and Martha Heller of the Media Bureau; Phil Verveer, Senior Counsel to Chairman Wheeler, and Jessica Almond, Legal Advisor to Chairman Wheeler.

The NBC Affiliates representatives ("Affiliates") recommended that the Commission make no change in the "totality of circumstances" test of the Commission's "good faith" negotiating requirement for retransmission consent negotiations. They pointed out that hundreds of local broadcast station retransmission consent negotiations take place each year with no interruption of service to MVPD subscribers. They observed that the handful of service interruptions that do occur, occur repeatedly with the same four large, national satellite and cable companies, and that the Commission's current proceeding, unfortunately, only serves to encourage these and other MVPDs to exploit the proceeding with additional service interruptions to secure a regulatory advantage in future retransmission consent negotiations.

The Affiliates underscored, as noted in their formal *Comments* and *Reply Comments*, that the Commission does not have statutory authority to mandate interim carriage during retransmission consent disputes. They pointed out that, contrary to arguments of some MVPDs, Section 325 of the Communication's Act differs materially in this respect from the Taft Hartley Act, which expressly authorizes the courts, under certain conditions, to preserve the *status quo* during certain protracted labor negotiations.

The Affiliates noted the unfortunate, but unmistakable, trend in which top-rated sports and entertainment programming is rapidly migrating from *free*, over-the-air local broadcast stations to various subscription-based payTV services, a reflection of the growth in competition for top-rated programming among all video distribution platforms. The Affiliates cited, as examples, this week's NCAA Final Four championship basketball game, the College Bowl Series, and other top-rated collegiate and professional sports programs, along with various entertainment programs, which have migrated from the nation's *free*, over-the-air broadcast service to various subscription-based pay TV services. The Affiliates noted these changes are a direct result of the intensely competitive nature of today's video market, and if the Commission adopts rules that impairs, impedes, or handicaps the retransmission consent negotiating ability of local broadcast stations to the competitive advantage of national payTV distribution platforms, it would only serve to assist and accelerate the migration. Not only would such a result be competitively unfair to local broadcast stations and their broadcast networks, it would be contrary to the interests of all viewers, and, in particular, it would deprive *all access* to the nation's top-rated sports and entertainment programming by those economically unable to subscribe to a payTV service. In addition, it would eliminate the financial ability of local broadcast stations to provide to their local communities news, public affairs, public safety, emergency, and other public service programming. Such a result, the Affiliates observed, was clearly not the intent of Congress in enacting Section 325 of the Act, nor in instructing the Commission in the reauthorization of STELAR to review the "totality of circumstances" test.

Finally, in response to the repetitive whining of MVPDs of increases in retransmission consent fees for top-rated local broadcast stations, the Affiliates pointed out the dramatic increase in monthly subscriber fees for various payTV cable/satellite program services as noted in the attached March 26, 2016 *Wall Street Journal* article—fees which, clearly, dwarf the most aggressive broadcast retransmission consent fees paid by MVPDs for *significantly more popular* local broadcast stations.

Program Services	**Monthly Subscriber Fee**
Yankees Channel	$5.36 (increase to $6.00 pending)
Dodgers Channel	$4.59
New England Sports Channel	$4.25
SportsNet Philadelphia	$4.12

The Affiliates discussed the "unregulated" negotiating process for MVPD carriage of the above and other payTV program services, and the Affiliates respectfully urged the Commission not to give unregulated payTV services an unfair competitive advantage over local broadcast stations in negotiating for carriage of their signals. To do so would impair the ability of the nation's *free*, over-the-air broadcast service to compete and acquire top-rated sports and entertainment television programming and, in turn, relegate, by regulatory fiat, the nation's *free* over-the-air broadcast service to a fourth-rate video service. If, as it should be, the goal of the Commission in this proceeding is to serve the interests of consumers and the nation's television viewers, the Commission should terminate this proceeding with no change in the existing "totality of circumstances" test.

If you should have any questions in connection with this matter, it is respectfully requested that you communicate with this office.

Very truly yours,

Wade H. Hargrove

Wade H. Hargrove
Counsel to the NBC Television Affiliates

cc: Commissioner O'Rielly
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Phil Verveer
David Grossman
Marc Paul
William Lake
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Nancy Murphy
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Steve Broeckaert
Martha Heller
Jessica Almond

Sports-TV Boom Under Pressure

Comcast-Fox dispute about Yankees channel is sign of tensions over rise in sports-TV costs

By Joe Flint
And Matthew Futterman

America's sports-rights bonanza is showing signs of age.

Since November, YES, the channel that airs **New York Yankees** games, has been blacked out on **Comcast** Corp. as the cable giant and the network's parent, **21st Century Fox**, battle over terms of payment.

In the off-season, it wasn't a huge controversy. But as opening day—April 4 for the Yankees—fast approaches, the stakes are rising and acrimony between the sides is mounting, spilling over into the broader relationship between the two media companies.

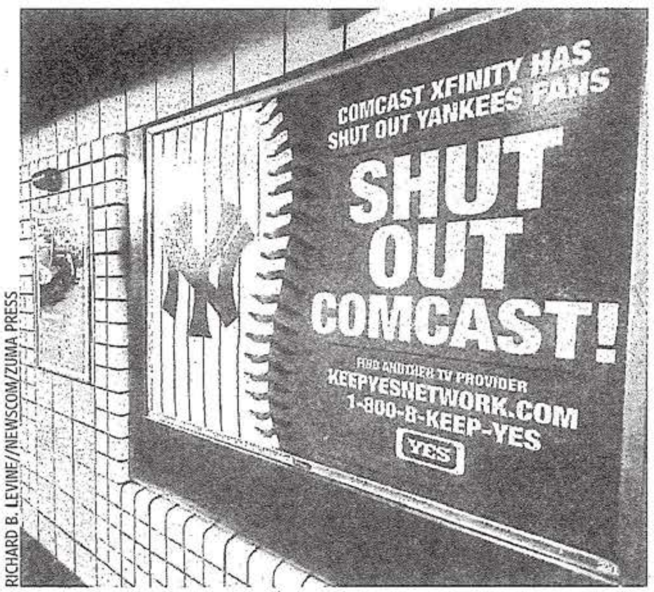
The fight is the latest and most high-profile example of how pay-TV providers are digging in their heels over rising sports-TV costs. The standoffs, which have hit cities including Los Angeles and Houston, are testing the limits of the sports-rights boom of recent decades and are threatening a money stream that has powered industry profits, filled the coffers of teams and financed huge salaries for star players.

Until recently, the business of selling sports rights flourished on the assumption that passionate fans simply can't live without watching their teams on TV. That logic led big media companies to collectively place long-term bets over the past 15 years or so worth over $150 billion on rights to telecast games, according to Guggenheim Securities. That gave rise to a host of sports channels that now account for 35% of the typical monthly cable bill, according to research firm SNL Kagan.

More recently, however, some big pay-TV distributors are beginning to push back aggressively in fee negotiations, concerned viewers are getting fed up with sports costs and could "cut the cord" in greater numbers. They are also making a bet that consumers don't care as much as teams and networks think.

"I believe that finally sports TV is in crisis mode," said Jimmy Schaeffler, head of me-

Please see CABLE page B4



RICHARD B. LEVINE/NEWSCOM/ZUMA PRESS

Fox has released anti-Comcast ads on billboards and in papers.

Pricey TV

Comcast and 21st Century Fox each back some of the most expensive regional sports networks in the country.

Average cost to pay-TV provider per subscriber per month

Network	Owner	Cost
YES Network (Yankees Channel)	21st Century Fox	$5.36
SportsNet LA	Los Angeles Dodgers	$4.59
Fox Sports Detroit	21st Century Fox	$4.25
New England Sports Network	Comcast	$4.12
SportsNet Philadelphia	Comcast	$4.12

Source: SNL Kagan
THE WALL STREET JOURNAL.

CABLE

Continued from page B1

dia and telecom consultancy Carmel Group.

Jeff Krolik, president of Fox Sports Regional Networks, the parent of YES, said regional sports networks "continue to deliver tremendous value to our distributors and viewers alike." He added: "Despite wild claims otherwise, [the networks] make up a relatively modest portion of the cable bill."

Comcast's executive vice president of consumer services, Marcien Jenckes, said the company hopes to bring back the channel and is working to resolve the standoff. "But we can only return YES to our customers if the network and its majority owner, Fox, become realistic with their price demands," he said.

$5.36

How much YES network costs pay-TV providers a subscriber a month.

Pay-TV providers in Los Angeles, including DirecTV, are balking at the price for SportsNet LA, the Dodger's regional sports network. More than 50% of the TV homes in the market don't carry the channel, the second-most-expensive regional sports network after the Yankees' version. On Tuesday, Time Warner Cable, which distributes the network, offered to cut its fee 30% for the coming season.

In Chicago, the Cubs have long sought to launch their own regional sports network after the 2019 season when their current deal with Comcast SportsNet Chicago expires. That goal hasn't changed, but the baseball club's operations chief, Crane Kenney, told reporters at the team's winter convention that the franchise would watch with "a very wary eye what's going on in the cable universe."

Club spokesman Julian Green said Thursday, "We believe significant value in the media rights remains."

Media consultant and former Fox executive David Sternberg said distributors "have learned that they can live without" regional sports channels in many cases, or at least can manage with minimal subscriber losses. "The balance of power has definitely shifted to the distributors," he said.

The situation with YES involves one of sport's most storied franchises.

Comcast risks drawing the ire of passionate Yankees fans who expect to see one of the American League's top teams in action. The standoff withholds the channel from almost a million homes close to New York City in New Jersey, Connecticut and Pennsylvania. The cable giant is betting that it has more to lose by paying high fees to Fox and passing them on to customers, many of whom may not watch sports.

YES network costs pay-TV providers about $5.36 a subscriber a month, according to SNL Kagan, making it one of the most expensive channels on the cable dial. YES is seeking to increase its fee to about $6.

The YES network also carries the NBA's Brooklyn Nets and New York City's Major League Soccer team.

The brawl between Comcast and Fox is getting in the way of other business between the companies. When Comcast wanted to discuss renewing its distribution deal with the popular Fox News Channel earlier this year, it was rebuffed. Fox News Chairman Roger Ailes signaled he would resist a deal until the YES situation was resolved, according to people familiar with the situation.

That marked a turnabout for the Fox News executive, who didn't let a similar dispute between Fox Sports San Diego and Time Warner Cable three years ago delay a deal with the cable company.

Earlier this month, Fox Networks Group Chief Peter Rice met Neil Smit, the chief of Comcast's cable group, on the sidelines of a cable industry trade group gathering in Washington. Mr. Rice warned Fox would take the dispute public with a marketing campaign if Comcast didn't sign its latest offer, people familiar with the deliberations say. Fox waited a week for a response from Comcast.

JONATHAN DYER/REUTERS

Yankees games on YES averaged 250,000 viewers last season, down from a 2007 high of 450,000.

Soon after, Fox released anti-Comcast ads on billboards, radio and in newspapers. The company recruited an army of people to march in midtown Manhattan wearing sandwich placards encouraging fans to switch pay-TV distributors.

21st Century Fox and News Corp, which owns The Wall Street Journal, were part of the same company until 2013.

The problem for Fox and other media companies is that many agreed to high-price sports-rights deals when cord-cutting was more myth than reality. Today, distributors are looking to keep subscribers by selling "skinny" packages that don't include expensive networks such as regional sports channels.

Such a move puts in jeopardy the revenue for networks that currently count on the hefty fees that come with being distributed in a bundle of channels to every home, whether the subscriber is a sports fan or not.

Comcast itself owns stakes in eight local sports channels. It put a network dedicated to Houston's Astros and Rockets into involuntary bankruptcy in 2013 after failing to get widespread distribution.

James Murdoch, a Yankees fan and Fox's current chief executive, spearheaded the company's substantial investments in YES. In 2012, YES signed a 30-year deal with the baseball team to secure TV rights through 2042, at a cost of some $1.5 billion. In 2014, Fox increased its 49% share of YES to a controlling 80% stake in a deal that valued the network at nearly $4 billion, and inherited those rights-payment obligations.

The deal was meant to bring in lucrative cable subscription fees and to also give Fox leverage to extract fee increases for other channels it owns.

Fox acknowledges now that while regional sports networks are still a significant profit source, they are diminishing in importance. "When you look out, they will not be a growth driver of the business," 21st Century Fox Chief Financial Officer John Nallen said this month at an investor conference.

He added he still considers regional sports networks must-have programming. "A package that doesn't have what is the most important television in the market would be pretty surprising," he said.

Comcast argues that Fox's price demands simply don't line up with the viewership of YES in its territory. Comcast said its data show fewer than 2% of its households account for the Yankees audience at any given time.

"We are not going to subsidize the YES business by charging a broad set of consumers when only a subset wants it," said Mr. Jenckes, Comcast's executive vice president.

YES and Fox dispute Comcast's viewer numbers. YES President Tracy Dolgin in an interview called the data "voodoo math."

According to Nielsen, Yankees games on YES averaged 250,000 viewers last season, down 44% from its high of 450,000 in 2007.

In the New York City market area, which includes parts of New Jersey and Connecticut, YES was the highest-rated cable network and third-most-watched channel overall during the team's last season.